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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 377

STANDARD OIL COMPANY, a corporation,
Petitioner

vs.

CITY OF TALLAHASSEE, a municipal corporation,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement	2
Reasons for granting the writ	6
Conclusion	10

CITATIONS

Cases:	Page
Nectow v. *City of Cambridge*, 277 U. S. 181	6
Euclid v. *Ambler Realty Company*, 272 U. S. 365	6
Forde v. *City of Miami Beach*, 1 Sou. 2d 642	7
City of Miami Beach v. *Ocean and Inland Company*, 3 Sou. 2d 364	7

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CITY OF TALLAHASSEE, a municipal corporation,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on June 30, 1950. Petition for re-hearing denied on July 28, 1950.

Opinions Below

The memorandum decision of the District Court (R. 124) is reported in 87 Fed. Supp. 145. The opinion of the Court of Appeals (R. 141) is reported in 183 Fed. (2d) 410 (Advance Sheet 183 Fed. (2d) No. 4, Sept. 18, 1950).

Jurisdiction

The judgment of the Court of Appeals was entered on June 30, 1950, (R. 141) and Petition for re-hearing was denied on July 28, 1950 (R. 156). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

Question Presented

Where a gasoline service station is located in an area where the operation of other businesses is permitted and the area is not adaptable to residential development, is a municipal zoning regulation valid, where same creates a residential district within the area, prohibits the operation of said station, and thereby virtually confiscates said property, there being no basis to support such regulation other than the mere location of the station near public buildings?

Statement

On April 28, 1949 petitioner filed its complaint in the United States District Court alleging that during the year 1938 it purchased a parcel of land in Tallahassee, Florida for the sole purpose of erecting thereon a service station as one of the outlets for the sale of its products; that at the time of said purchase there did not exist any restriction by municipal ordinance, or otherwise, against such use and that petitioner did, at considerable expense, construct a service station thereon, opening same for business November 1, 1938; that under the zoning ordinances then in effect said property was located in Residence District "B", which permitted the construction and operation of said station; that under date of January 24, 1939, respondent adopted an ordinance which changed said location to Business District "A", and provided that no additional service stations should be constructed or operated within such district and

that all locations of sites therein then used for motor vehicle service stations should be discontinued on and after January 1, 1949; that another ordinance was adopted by respondent on April 27, 1948 (R. 2, 3) wherein said location was changed from Business District "A" to Residence District "A", the provision with reference to the discontinuance of service stations within the area where petitioner's station is situate being carried forward therein; that the enforcement of said ordinance as to the discontinuance of service stations was deferred by respondent until May 1, 1949 and respondent notified petitioner to discontinue the operation of said station prior to that date. The complaint further alleges that the property immediately adjacent to that of the petitioner's has not changed essentially in character since the construction of said service station and that said district is not naturally or primarily a residential one, that the classification of same as residential is arbitrary and unreasonable and has no relation to the announced purposes of the ordinance. It is further alleged that the exemption from the ordinance of other non-conforming business uses in said area except filling stations is discriminatory; and further, that the operation of said station is not inimical to the safety, health, morals or general welfare of the community but, on the contrary, is, because of its location, a great public convenience (R. 4, 5); that said property is not adaptable to any other use permitted by the ordinance, nor will the ordinance change its adaptability; that the re-zoning of said property from time to time has been done without regard to the character of the property in said district (R. 8, 9); that by the terms of the last mentioned ordinance which changed the area to Residence District "A" there was left therein as Business District "A" a small area or island just one block east of petitioner's property in which

the operation of many businesses is permitted, although there is nothing that distinguishes the area comprising said island from any of the surrounding property and particularly from that of the petitioner (R. 13); that the discriminatory nature of the ordinance, as applied to petitioner's property, is accentuated by reason of the fact that, with no reasonable basis for distinction, the operation of motor vehicle filling stations is permitted as a non-conforming use in all zones or areas of the City except for a small portion of Residence District "A" where petitioner's station is located (R. 14, 15); that petitioner's station is located just one short block south of the principal business area of said city (R. 8); that the building on petitioner's property can not be used for any purpose other than that for which it was constructed and if such use is prohibited, same will remain, but unused and as a complete loss to petitioner; that said property, being undesirable and unadaptable for residential development and being closed to further business of any kind by said zoning ordinance, the result would be confiscatory although the property would continue liable for the payment of ad valorem taxes to Leon County, Florida as well as to respondent (R. 10). The complaint further alleged that by reason of the foregoing allegations, said zoning ordinance, in its application to petitioner's property denies it the equal protection of the laws and deprives it of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States and contrary to the provisions of Sections 1 and 12 of the Declaration of Rights of the Constitution of the State of Florida (R. 10, 11).

The District Court entered a temporary restraining order as prayed on April 30, 1949. (R. 15, 16).

Respondent filed its answer in which its defenses were in substance that the area within which petitioner's property is located is devoted to residential use, for parks and for government buildings, that the vehicular and pedestrian traffic is heavy at the street intersection where same is situate and that by reason of the nature of the business conducted by petitioner, the ordinance complained of is a proper exercise by the respondent of its police power. Respondent also denied that the removal provisions of the ordinance were arbitrary, unreasonable or discriminatory and included a denial of the allegation of the complaint that the operation of motor vehicle stations is permitted as a non-conforming use in all zones and areas of the city except the area of the city in which petitioner's station is located. (R. 17, 18, 19).

The trial court, after considering the pleadings, stipulation of counsel and testimony, dissolved the temporary restraining order and dismissed the suit. (R. 122, 123).

In its memorandum decision the court conceded that the facts in the case as alleged in the complaint were not in essential dispute (R. 129, 130, 131, 132, 133), but, ignoring same, said that since the service station is within close proximity to the state capitol, several state office buildings and a public school, this constitutes sufficient ground for the city to require its discontinuance (R. 131). The court said it would not substitute its judgment for that of the city authorities. (R. 134).

Petitioner prosecuted an appeal to the U. S. Court of Appeals, 5th Circuit, and by the majority opinion of said court filed on June 30, 1950, the judgment of the trial court was affirmed (R. 141). Chief Judge Hutchinson filed a dissenting opinion (R. 147).

Following the opinion of the Court of Appeals, petitioner filed a petition for re-hearing of the case in said court (R. 150), which petition was considered and denied by order of said court filed July 28, 1950. (R. 156).

Reasons for Granting the Writ

1. The majority decision of the Court below in the nstant case is in direct conflict with the decisions of this court in the cases of *Nectow* vs. *City of Cambridge*, 277 U. S. 181, 72 Law Ed. 843 and *Euclid* vs. *Ambler Realty Company*, 272 U. S. 365; 71 Law Ed. 303; 47 Sup. Ct. Rep. 114. In those cases the principle was clearly established that the governmental power to restrict the use of property by municipal zoning regulations cannot be imposed if it does not bear a substantial relation to the public health, safety, morals or general welfare. In the Nectow case where invasion of the property was found to be highly injurious and a necessary basis for the support of the invasion was wanting, the court held that the action of the zoning authorities comes within the ban of the Fourteenth Amendment and cannot be sustained.

In the instant case, it is conceded that the zoning regulation, as applied to petitioner's property, results in virtual confiscation, nevertheless, the Court of Appeals sustained the ordinance without any basis to support it except that the property of petitioner, a filling station, is located in close proximity to the State Capitol and other public buildings.

This conclusion is reached although there is nothing in the opinion nor in the record of the case to show how the mere location of said property near public buildings bears any relation to the public health, safety, morals, or general welfare.

The conflict between the principle of the *Nectow* case and the majority opinion of the Court of Appeals in the instant case is pointed up in the dissenting opinion filed by Chief Judge Hutchinson in which he said:

> "Fully canvassing the evidence in the light of the contentions made and specifically rejecting those that the ordinance promoted health, safety, or morals, the court, though he agreed with the defendant that the value of his property would be ruined and that the zoned property was not adapted to the use for which it was zoned, to-wit, residence property, yet sustained the ordinance on two considerations, which were inadequate to sustain it. One of these, a consideration of fact, was that the property was within close proximity to the state capitol, several state office buildings and a public school. The other, a consideration of law, was that the court should not substitute its judgment for that of the legislative body of the city." And "I am in no doubt that in sustaining this admittedly confiscatory ordinance, a good general principle, the public interest in zoning, has been run into the ground, the tail of legislative confiscatory by caprice has been permitted to wag the dog of judicial constitutional protection."

2. The majority decision of the Court below in the instant case is in further conflict with the decision of this Court in the case of *Nectow* vs. *City of Cambridge*, supra, and also in conflict with the decision of this Court in the case of *Euclid* vs. *Ambler Realty Co.*, supra, and with the decisions of the Florida Supreme Court in the cases of *Forde* vs. *City of Miami Beach*, 1 Sou. (2d) 642, and *City of Miami Beach* vs. *Ocean and Inland Company*, 3 Sou. (2d) 364, in that said opinion concludes, as a matter of law, that the Court should not substitute its judgment for that of the legislative body. In the cases cited, the prin-

ciple is clearly established that when the constitutionality of a zoning ordinance as applied to specific property is challenged, it is the duty of the Court to inquire into the factual situation to determine whether restrictions on the use of property are necessary in the interest of the public welfare. These decisions clearly recognize the power of courts to look behind the legislative act to determine that same is founded on reason and necessity and to prevent the injury of property rights where the attempted restrictions do not have a substantial relation to the public safety, health, morals or welfare.

3. Settlement of the question by this court is plainly in the public intrest, it being of great importance to urban property owners in growing communities throughout the United States whose property and business is in close proximity to public buildings to know whether, as in the instant case, a municipality may constitutionally invade their property rights by use restrictions which amount to confiscation, where the sole basis to support such restriction is that the property is located close to public buildings and therefore in some unexplained way affects the general welfare.

4. The majority decision of the Court below is believed to be erroneous. The opinion admits that the effect of the ordinance as applied to petitioner's property amounts to virtual confiscation but refuses to challenge the wisdom of the zoning authorities. The decision concludes that the ordinance cannot be viewed as arbitrary and unreasonable or as having no relation to the safety and general welfare of the community because petitioner's service station is located near public buildings. The Court utterly ignored the undisputed facts that show petitioner's property is

located on the principal business street of the city on which only one residence, now used for offices, has been constructed since 1940, that it is located one block south of the principal business section of the city, and that the natural trend in the area is toward business rather than residential development (R. 41, 52, 71). The trial Court conceded that six large State office buildings, replacing residences, have been constructed in the area subsequent to the erection of petitioner's service station, but indulged in the fallacious reasoning that buildings providing offices for State employees are not business buildings. Actually, the evidence shows that if the character of the area was residential prior to the construction of these buildings the erection and operation of same now definitely removes it from that category. Furthermore, the facts were undisputed that there have been no accidents during the existence of the station caused from automobiles either entering or leaving it (R. 180), and that respondent does not even maintain a traffic signal light at the intersection where the property is located (R. 22, 43, 44). Respondent admitted that the station is neat, clean and run in accordance with high ethical and moral standards (R. 18). Examination of these facts would have shown beyond doubt that the ordinance goes beyond the limits of necessity for, and bears no relation to, the public health, safety, morals or general welfare. In restricting the use of property to purposes for which same is not adaptable, and with no basis to support the restriction, the ordinance is clearly arbitrary and unreasonable, and on the authority of the cases heretofore cited should have been held invalid.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted.

LAWRENCE A. TRUETT

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Counsel for Petitioner.

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STANDARD OIL COMPANY, A CORPORATION,

Petitioner,

v.

CITY OF TALLAHASSEE, A MUNICIPAL CORPORATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statement	2, 3
Argument	3-10
Conclusion	11

TABLE OF CASES CITED

Atlantic Coast Line R. Co. v. Goldsboro
232 U. S. 548 3

Chicago & A. R. Co. v. Tranbarger
238 U. S. 67 3

City of Miami Beach v. Ocean & Inland Co.
3 So.(2d) 364 ..... 4, 9, 10

Euclid v. Ambler Realty Co.
272 U. S. 365 ..... 6, 9, 10

Fort Worth v. Gulf Refining Co. (Tex.)
55 S. W. (2d) 795 5

Godson v. Surfside
8 So. (2d) 497 10

Hadacheck v. Sebastian
239 U. S. 394 ..... 3, 4, 8, 9

Harden v. Raleigh (N. C.)
135 S. E. 151 9

Harz v. Paxton
97 Fla. 154, 120 So. 3 5

Herring v. Stannus (Ark.)
275 S. W. 321 5

Higgs v. Martin (Tenn.)
51 S. W. (2d) 237 5

Hyma v. Seegar (Mich)
207 N. W. 834 ..... 5, 8
Interstate Oil Co. v. Orange (N. J.)
165 Atl. 99 ..... 5, 8, 9
Kramer v. Baltimore (Md.)
171 Atl. 70 ..... 5, 8
Magnum Import Co. v. Coty
262 U. S. 159 3
Marblehead Land Co. v. City of Los Angeles
(CCA 9), 47 Fed. (2d) 528 10
Nectow v. City of Cambridge
277 U. S. 183 10
Neef v. City of Springfield (Ill.)
43 N. E. (2d) 947 5
People v. Murdock (N. Y.)
191 N. E. 871 5
Pierce Oil Corp. v. City of Hope
248 U. S. 498 ..... 3, 4, 5
Pocomoke City v. Standard Oil Co. (Md.)
159 Atl. 902 ..... 5, 8
Reinm. .n v. Little Rock
237 U. S. 171 ..... 3, 4
Standard Oil Co. v. Minneapolis (Minn.)
204 N. W. 165 5
State v. City of Miami
134 So. 541 4
State v. City of Miami
158 So. 82 4
State v. Ehringer
46 So. (2d) 601 10
State ex rel Oil Service Co. v. Starke (W. Va.)
122 S. E. 533 5

State v. McDonald (La.)
121 So. 613 10
State v. McShane (La.)
106 So. 252 9
State v. Peace
139 Fla. 394, 190 So. 607 5
State of Washington v. Fleming (Wash.)
225 Pac. 647 5
Texas Co. v. City of Tampa
(CCA 5) 100 Fed. (2d) 347 .....5, 8, 9
Townsend v. Farrey
182 So. 448 4
United States v. Johnston
268 U. S. 220 3
Wadhams Oil Co. v. Delavin (Wis.)
243 N. W. 224 5

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NO. 377

STANDARD OIL COMPANY, A CORPORATION,
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CITY OF TALLAHASSEE, A MUNICIPAL CORPORATION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner, Standard Oil Company, seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Fifth Circuit which affirmed a judgment of the United States District Court for the Northern District of Florida dissolving a temporary restraining order entered by the district court and dismissing the case.

OPINIONS BELOW

The memorandum decision of the district court (R. 124) is reported in 87 Fed. Supp. 145. The opinion of the Court of Appeals (R. 141) is reported in 183 Fed. (2d) 410 (Advance Sheet 183 Fed (2d) No. 4, Sept. 18, 1950.)

JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1950 (R. 141), and petition for rehearing was denied on July 28, 1950 (R. 150). The jurisdiction of this Court was invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. May a municipality by its zoning ordinance require the discontinuance of the operation of a gasoline filling station within an area of the city if the enforcement of the ordinance results in a depreciation in the value of the property or causes other financial loss to the owner?

2. May a municipality by a comprehensive zoning ordinance and plan require the discontinuance of the operation of a gasoline filling station within an area of the city where there is heavy vehicular and pedestrian traffic when the ordinance permits continued operation of three other filling stations in other areas, as non-conforming uses, there being no showing of traffic conditions in the other areas?

STATEMENT

The petitioner does not challenge the general authority of the respondent city to regulate the use of property or to require the discontinuance of an existing or non-

conforming use of property in the exercise of the police power through the enactment of a comprehensive zoning ordinance and plan. It contends, however, that the ordinance as applied to its property is unnecessary, unreasonable and discriminatory and in this application would have the Court review the determination of such questions by respondent's legislative body and the finding of specific facts by the district court and the Court of Appeals.

ARGUMENT

1. Certiorari is not granted to review facts.

The decision of the Court below is correct and there is no basis for further review. As this Court has stated: "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston,* 268 U. S. 220, 227. Certiorari is not granted "merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Import Co. v. Coty,* 262 U. S. 159, 163.

2. A vested interest cannot be asserted against the police power reasonably exercised.

The authority of a municipality to require the discontinuance of an existing or non-conforming use of property in the exercise of the police power has been specifically recognized and upheld by the Court. *Atlantic Coast Line R. Co. v. Goldsboro,* 232 U. S. 548; *Reinman v. Little Rock,* 237 U. S. 171; *Chicago & A. R. Co. v. Tranbarger,* 238 U. S. 67; *Hadacheck v. Sebastian,* 239 U. S. 394; *Pierce Oil Corp. v. City of Hope,* 248 U. S. 498. In the cases cited the Court has repeatedly upheld and applied the principle that as against the police power there can be no vested right. As

pointed out in *Pierce Oil Corp. v. City of Hope, supra*: "The power is a continuing one, and a business lawful today may in the future, because of the changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good."

3 Depreciation in value of the property or other resulting loss does not render the ordinance invalid.

That the enforcement of the ordinance might result in the depreciation in value of petitioner's property or result in other financial loss to the petitioner does not render the ordinance invalid as applied to the property. The contention of financial loss invariably appears in every case involving the validity of zoning ordinances and especially in attacks upon provisions requiring the discontinuance of non-conforming uses. The Court has consistently rejected such a contention and held that financial loss, no matter how severe, does not of itself give parties a vested right to continue a business, no matter how long it has been conducted, if the business is one whose location may be regulated under the police power. *Reinman v. Little Rock, supra; Hadacheck v. Sebastian, supra; Pierce Oil Corp. v. City of Hope, supra.* The decisions of this Court have been consistently followed by the Supreme Court of Florida. *State v. City of Miami,* 134 So. 541; *Townsend v. Farrey,* 182 So. 448; *State v. City of Miami,* 158 So. 82; *City of Miami Beach v. Ocean & Inland Co.,* 3 So. (2d) 364.

4 The location of gasoline filling stations is special subject of police power through zoning.

The regulation of the location of gasoline filling stations by municipalities is recognized as a special subject for

exercise of the police power through zoning ordinances. In *Pierce Oil Corp. v. City of Hope, supra,* it was held that a state may prohibit the sale of dangerous oils, even when manufactured under a patent from the United States, and it is judicially recognized that the operation of a gasoline filling station constitutes a hazard to the public safety. *Harz v. Paxton,* 97 Fla. 154, 120 So. 3; *State v. Peace,* 139 Fla. 394, 190 So. 607; *Texas Company v. City of Tampa,* (CCA 5), 100 Fed. (2d) 347; *State of Washington v. Fleming* (Wash.), 225 Pac. 647; *Standard Oil Company v. Minneapolis* (Minn.), 204 N. W. 165; *Herring v. Stannus* (Ark.), 275 S. W. 321; *People v. Murdock* (N. Y.), 191 N. E. 871; *Higgs v. Martin* (Tenn.), 51 S. W. (2d) 237; *Fort Worth v. Gulf Refining Co.* (Tex.), 55 S. W. (2d) 795; *Wadhams Oil Co. v. Delavin* (Wis), 243 N. W. 224.

It is also found that the location of a gasoline filling station in close proximity to public buildings is hazardous to public safety and inimicable to the public welfare. Especially is this true in the case of a state capitol building or along streets leading thereto; *State ex rel Oil Service Co. v. Starke* (W. Va.), 122 S. E. 533; *Neef v. City of Springfield* (*Ill.*), 43 N. E. (2d) 947. The location of such stations in the vicinity of public schools is not favored, *Interstate Oil Co. v. Orange* (N. J.), 165 Atl. 99. Ordinances prohibiting the location of gasoline filling stations within business or non-residential districts are upheld, *Pocomoke City v. Standard Oil Co.* (Md.), 159 Atl. 902; *Kramer v. Baltimore* (Md.), 171 Atl. 70; or at any place where by reason of traffic conditions the location of such a station would be dangerous to the public, *Hyma v. Seegar* (Mich.), 207 N. W. 834.

The respondent's City Manager testified that the volume of vehicular traffic at the intersection upon which peti-

tioner's station is located was heavy, that there was also extensive pedestrian travel along the sidewalk on the west side of the station, and that vehicles entering and leaving petitioner's station added to the already congested intersection and impeded both vehicular traffic and pedestrian travel (R. 102-105). This evidence was not contradicted. The Court of Appeals reached the conclusion that in view of the location of the petitioner's station near the State Capitol and the Supreme Court Building, as well as several other state office buildings and a public school, that the discontinuance of the gasoline filling station under the ordinance could not be viewed as arbitrary and unreasonable, "or as having no relation to the safety and general welfare of the community affected." (R. 145-146)

There is no significance in the fact that there has been little or no recent residential development along the street on which petitioner's filling station is located in the absence of any showing in the record that there were any vacant lots upon which additional residences might have been built. Contentions of "natural adaptability" and "the natural trend toward business development" resulted in issues of fact and findings by the district court on such issues adverse to petitioner. The finding of the district court was not only supported by substantial evidence and by the physical conditions within the area, but was confirmed by the Court below. Similar contentions of "natural adaptability"—"highest adaptability" and "the natural trend toward business development" were rejected by this Court in the case of *Euclid v. Ambler Realty Co.*, 272 U. S. 365.

5 There is no confiscation of petitioner's property.

There is no confiscation of petitioner's property for the

ordinance permits the use of the property for other business use. The zoning ordinance, Section 27 (petitioner's exhibit 1, introduced in evidence R. 37) provides that with the exception of the use for filling station purposes within the district, any non-conforming use existing at the time of the passage of the ordinance might be continued and "may be continued when changed to another non-conforming use not substantially different in its purpose and method of operation," subject to certain conditions relating to additions to present buildings. Respondent conceded at the pre-trial conference that the property might be used for a business use other than for a gasoline filling station (R. 34). If petitioner, prior to the effective date of the provision requiring the station to discontinue operation, had any doubt as to the construction to be put on Section 27 of the ordinance relating to the use of the premises for other business purposes, it could have obtained assurance of that right by application under the provisions of Section 30 of the ordinance (petitioner's exhibit 1, introduced in evidence R. 37) and the procurement of a certificate of occupancy showing that the proposed use of its property for business purposes was permissible.

6 There is no discrimination or denial of the equal protection of the law.

The fact that there is a small area classified as Business District A one block east of petitioner's property affords no basis for a charge of discrimination, for Section 5 of the zoning ordinance (petitioner's exhibit 1, introduced in evidence R. 37) discloses that gasoline filling stations are not permitted within Business District A. The record clearly shows that there is no discrimination against petitioner's filling station, to the contrary it shows that the removal

requirement was adopted in 1939 as a comprehensive plan of the City for the elimination of all gasoline service stations from the most congested business and residential areas of the City; and that two gasoline filling stations, to-wit, one of petitioner and one of American Oil Company, had, prior to the institution of the suit, been eliminated by ordinance from the congested Business A District located north of the Residence A District within which petitioner's property is located (R. 90). Furthermore, the record shows that two other gasoline filling stations, one of Gulf Refining Company and the other of American Oil Company, were in operation in the same Residence A District in which petitioner's station is located at the time of adoption of the provision of the zoning ordinance requiring discontinuance of such operations and that both of the other stations have ceased operation (R. 46, 112). As pointed out in the opinion of the Court below: "Moreover, the evidence shows that other service stations formerly located in the same district where plaintiff's station is located have ceased operation before the deadline given them under the ordinance, and that plaintiff's station is the only one of five service stations affected by the zoning ordinance which is still in operation." (R. 144)

Furthermore, the fact that three other filling stations are permitted under the terms of the ordinance to continue operation in other areas of the city does not support petitioner's contention that the ordinance as applied to its property denies the equal protection of the law; especially in the absence of any showing in the record of traffic conditions at the locations of the other stations. *Hadacheck v. Sebastian, supra; Texas Co. v. City of Tampa, supra; Hyma v. Seegar, supra; Pocomoke City v. Standard Oil Co., supra; Kramer v. Baltimore, supra; Interstate Oil Co.*

v. Orange, supra; State v. McShane (La.), 106 So. 252; *Harden v. Raleigh* (N. C.), 135 S. E. 151. As pointed out by this Court in *Hadacheck v. Sebastian, supra*: "It may be that brickyards in other localities within the city where the same conditions exist are not regulated or prohibited, but it does not follow that they will not be. That petitioner's business was first in time to be prohibited does not make its prohibition unlawful." In *Harden v. Raleigh, supra*, the Supreme Court of North Carolina pointed out that in one part of a district a filling station may be noxious or offensive to the public within the purview of the ordinance, while in another part it may not be; and that at one place it may menace public safety and at another it may not; the Court holding that an ordinance forbidding the granting of a license for any gasoline filling station at any location where by reason of traffic conditions or fire explosive hazards, a filling station would imperil the public safety was not invalid.

7. The courts will not interfere with municipal discretion in matters of zoning.

It is a well recognized and established principle that the courts will not interfere with municipal discretion in matters of zoning and that there is a presumption of validity surrounding such ordinances. As pointed out by this Court in *Euclid v. Ambler Realty Co., supra*: "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control, * * * We have nothing to do with the wisdom or good policy of municipal ordinances." To the same effect are *Hadacheck v. Sebastian, supra; Texas Co. v. City of Tampa, supra;* and the following cases decided by the Supreme Court of Florida: *City of Miami Beach v. Ocean*

& Inland Co., supra; Godson v. Surfside, 8 So. (2d) 497; *State v. Ehringer,* 46 So. (2d) 601.

8. There is no conflict with other decisions.

The petitioner incorrectly contends that the decision of the Court below is in conflict with that of *Nectow v. City of Cambridge,* 277 U. S. 183, and with that of *Euclid v. Ambler Realty Co., supra.* In the Nectow case there was a finding of fact by the special master which was confirmed by the trial court, and it appeared clearly from such facts that the restrictive provisions of the Cambridge ordinance as applied to the property had no relation to public safety or welfare. In the instant case the finding of the trial court, confirmed by the Court of Appeals, supported the conclusion that the ordinance had a direct relation to the general welfare. The decision of the Court of Appeals is not in conflict with the Village of Euclid case for in the instant case both the district court and the Court below inquired into the reasonableness and necessity for the ordinance in its application to the property of petitioner, and the Court below reached the conclusion that under the facts the discontinuance of petitioner's gasoline filling station under the ordinance could not be viewed as arbitrary and unreasonable or as having no relation to the safety and general welfare of the community affected (R. 145-146).

This Court has consistently refused certiorari in similar cases presenting the validity of the provisions of zoning ordinances requiring the discontinuance of non-conforming uses. *State v. McDonald* (La.), 121 So. 613, cert. den. 280 U. S. 556; *Marblehead Land Co. v. City of Los Angeles* (CCA 9), 47 Fed. (2d) 528, cert. den. 284 U. S. 634.

CONCLUSION

The decision of the Court below is correct; there is no conflict of decisions and no basis for further review. The petition for writ of ceriorari should be denied.

Respectfully submitted,

JAMES MESSER, JR.
Counsel for Respondent.

November 1950.